

members of a group regarding the purchase of unsubscribed shares;

(12) A tax opinion concerning the federal income tax consequences of the proposed conversion;

(13) Consents from experts to use their opinions as part of the notice; and

(14) An estimate of conversion-related expenses.

(d) *Additional information.* The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion. The institution proposing to convert from mutual to stock form shall promptly provide such information to the FDIC.

(e) *Acceptance of notice.* The 60-day notice period specified in § 303.163 shall commence on the date of receipt of a substantially complete notice. The appropriate regional director (DOS) shall notify the institution proposing to convert in writing of the date the notice is accepted.

(f) *Related applications.* Related applications that require FDIC action may include:

(1) Applications for deposit insurance, as required by subpart B of this part; and

(2) Applications for consent to merge, as required by subpart D of this part.

§ 303.162 Waiver from compliance.

(a) *General.* An institution proposing to convert from mutual to stock form may file with the appropriate regional director (DOS) a letter requesting waiver of compliance with this subpart or § 333.4 of this chapter:

(1) When compliance with any provision of this section or § 333.4 of this chapter would be inconsistent or in conflict with applicable state law; or

(2) For any other good cause shown.

(b) *Content of filing.* In making a request for waiver under paragraph (a) of this section, the institution shall demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the institution, entail a breach of fiduciary duty on part of the institution's management or otherwise be detrimental or inequitable to the institution, its depositors, any other insured depository institution(s),

the federal deposit insurance funds, or to the public interest.

§ 303.163 Processing.

(a) *General considerations.* The FDIC shall review the notice and other materials submitted by the institution proposing to convert from mutual to stock form, specifically considering the following factors:

(1) The proposed use of the proceeds from the sale of stock, as set forth in the business plan;

(2) The adequacy of the disclosure materials;

(3) The participation of depositors in approving the transaction;

(4) The form of the proxy statement required for the vote of the depositors/members on the conversion;

(5) Any proposed increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be granted to officers and directors/trustees of the bank in connection with the conversion;

(6) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold;

(7) The process by which the bank's trustees approved the appraisal, the pricing of the stock, and the proposed compensation arrangements for insiders;

(8) The nature and apportionment of stock subscription rights; and

(9) The bank's plans to fulfill its commitment to serving the convenience and needs of its community.

(b) *Additional considerations.* (1) In reviewing the notice and other materials submitted under this subpart, the FDIC will take into account the extent to which the proposed conversion transaction conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (OTS) (12 CFR part 563b), as currently in effect at the time the notice is submitted. Any non-conformity with those provisions will be closely reviewed.

(2) Conformity with the OTS requirements will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion

transaction would pose a risk to the bank's safety or soundness, violate any law or regulation, or present a breach of fiduciary duty.

(c) *Notice period.* (1) The period in which the FDIC may object to the proposed conversion transaction shall be the later of:

(i) 60 days after receipt of a substantially complete notice of proposed conversion; or

(ii) 20 days after the last applicable state or other federal regulator has approved the proposed conversion.

(2) The FDIC may, in its discretion, extend the initial 60-day period for up to an additional 60 days by providing written notice to the institution.

(d) *Letter of non-objection.* If the FDIC determines, in its discretion, that the proposed conversion transaction would not pose a risk to the institution's safety or soundness, violate any law or regulation, or present a breach of fiduciary duty, then the FDIC shall issue to the institution proposing to convert a letter of non-objection to the proposed conversion.

(e) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion transaction poses a risk to the institution's safety or soundness, violates any law or regulation, or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution not to consummate the proposed conversion until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking regulator and state or federal securities regulator involved in the conversion.

(f) *Consummation of the conversion.* (1) An institution may consummate the proposed conversion upon either:

(i) The receipt of a letter of non-objection; or

(ii) The expiration of the notice period.

(2) If a letter of objection is issued, then the institution shall not consummate the proposed conversion until the FDIC rescinds such letter.

§ 303.164 Delegation of authority.

(a) Authority is delegated to the Director and Deputy Director (DOS) to issue a letter of non-objection to an institution proposing to convert when the proposed conversion transaction is determined not to pose a risk to the institution's safety or soundness, violate any law or regulation, present a breach of fiduciary duty, and not to raise any unique legal or policy issues. Such authority will be exercised in accordance with the time periods contained in § 303.163, unless the institution proposing to convert agrees to a longer time period.

(b) Authority to act on a waiver under § 303.162 is retained by the Board of Directors, except for requests to waive the depositor vote requirements in § 333.4(c)(2) of this chapter when the requests are based on the need for the bank to comply with applicable state law in effect as of January 1, 1999, that provides for voting by corporators as the only depositor voting mechanism for state-chartered, mutual savings banks, or prohibits depositors of state-chartered, cooperative savings banks in mutual form from voting by proxy. Authority is delegated to the Director and Deputy Director (DOS) to act on such waiver requests.

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to accept notices of intent to convert to stock form and to extend the initial 60-day period within which FDIC may object by an additional 60 days.

[63 FR 44713, Aug. 20, 1998, as amended at 64 FR 20142, Apr. 26, 1999]

Subpart J—International Banking

§ 303.180 Scope.

This subpart sets forth procedures for complying with application requirements relating to the foreign activities of insured state nonmember banks, U.S. activities of insured branches of foreign banks, and certain foreign mergers of insured depository institutions. Related delegations of authority are also set forth in the subpart.